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SEP 20 2002
HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
[Signature]

BEFORE A HEARING OFFICER

IN THE MATTER OF A SUSPENDED) Nos. 99-0906, 99-1826, 99-2115,
MEMBER OF THE STATE BAR OF) 02-0400, 02-0547, 02-0555,
ARIZONA,) 02-0593, 02-0722
)
MAXIMILIANO S. GARCIA,) HEARING OFFICER'S REPORT
Bar No. 014435) AND RECOMMENDATION
)
RESPONDENT.)

A hearing was held at the Supreme Court of Arizona, Arizona Courts Building, Phoenix, Arizona 85007 on September 9, 2002. The State Bar of Arizona was represented through bar counsel, John A. Furlong. The Respondent, although having received notice of the hearing, was not present either in person or through counsel. Based upon the matters in the record as well as information received at the hearing, the undersigned Hearing Officer hereby submits the following findings of fact, conclusions of law, proportionality analysis and recommendations:

PROCEDURAL HISTORY

An initial complaint concerning Matter Nos. 99-1826 and 99-2115 was originally filed on August 31, 2000. An amended complaint was filed on December 1, 2000, adding matter no. 99-2115. A Tender of Admissions and Agreement for Discipline by Consent was filed on June 4, 2001, signed by the

1 Respondent and the State Bar. The Consent Agreement came before the
2 Disciplinary Commission on October 13, 2001, and on November 23, 2001 the
3 Disciplinary Commission filed its report, unanimously recommending a rejection
4 of the Consent Agreement and Joint Memorandum. On February 26, 2002, by
5 Order of the Supreme Court, the case was dismissed and the matter remanded to
6 the Hearing Officer for further proceedings.
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9 On June 3, 2002, the State Bar filed a Motion to Amend Complaint,
10 requesting that the Hearing Officer allow a Second Amended Complaint, adding
11 five new matters. These were matter nos. 02-0400, 02-0547, 02-0555, 02-0593
12 and 02-0722. This Hearing Officer granted that Motion to File a Second
13 Amended Complaint on June 18, 2002, at which time the Second Amended
14 Complaint was filed on June 21, 2002. Thereafter, the Second Amended
15 Complaint was served by mail upon Respondent on June 21, 2002. On July 30,
16 2002, a Notice of Default was filed and served. On August 21, 2002, Entry of
17 Default was filed.
18
19

20 Also of procedural import is the fact that the State Bar moved for an
21 Interim Suspension on May 14, 2002 and that the Supreme Court entered an
22 Order suspending the Respondent on July 10, 2002. The State Bar also moved
23 for an Order Appointing Conservator over the Respondent's files. Presiding
24 Superior Court Judge Colin Campbell also granted that Order. The Respondent
25

1 failed to appear at a hearing to determine why cause did not exist for the
2 conservatorship appointment and, as a result, a subsequent Order was issued
3 establishing the conservatorship over the abandoned files.
4

5 STATEMENTS OF FACTS

6 The facts as set forth in the State Bar's Complaint are deemed admitted by
7 way of the Respondent's default. The Second Amended Complaint is
8 incorporated herein by this reference.
9

10 CONCLUSION OF LAW

11 The facts that have been deemed admitted, establish that Respondent
12 repeatedly violated many of the Rules of Professional Conduct. Count-by-Count,
13 each of the Rules of Professional Conduct violated by the Respondent by virtue
14 of the admitted facts pertaining to each Count are hereinafter set forth.
15

16 Count One (File No. 99-1826)

17 Respondent failed to adequately communicate the scope of his
18 representation with the client. Additionally, Respondent was not diligent in his
19 representation of his client. Respondent was obligated to return any unearned
20 portion of the retainer. Respondent was not candid nor truthful with the tribunal
21 or his client when he indicated that he would refund the retainer to his client.
22 Additionally, Respondent violated a court order by not refunding the retainer.
23 Respondent was also not forthright with the State Bar concerning the
24 representation.
25

1 Respondent's conduct as described in this count violated Rule 42,
2 Ariz.R.S.Ct., specifically ERs 1.2, 1.3, 1.4, 1.5, 3.3, 4.1, 8.1(b), 8.4 and Rule
3 51(e) and (k).

4 **Count Two (File No. 99-2215)**

5 Respondent showed a lack of competence and diligence, and failed to
6 expedite litigation by not timely filing the brief with the court, by not timely filing
7 his notice of appearance, and by not obtaining the court transcripts until after
8 several filing deadlines had passed. Respondent failed to adequately
9 communicate with the client to keep him informed regarding the status of the
10 case. Respondent also engaged in conduct that is prejudicial to the administration
11 of justice.

12 Respondent's conduct as described in this count violated Rule 42,
13 Ariz.R.S.Ct., specifically ERs 1.1, 1.3, 1.4, 3.2 and 8.4.

14 **Count Three (File No. 99-0906)**

15 After Benito Juarez and his father confronted Respondent about why he
16 had Benito Juarez admit to being in the United States illegally, Respondent filed a
17 Motion to Withdraw on or about August 20, 1998 in the Youngtown Municipal
18 Court indicating "defendant has failed to abide by the contractual agreement in
19 reference to attorney's fees." On March 1, 1999, in post-conviction relief
20 proceedings, the Superior Court found that Juarez' admission to being in the
21 United States illegally was an erroneous admission. Juarez was represented by
22 new counsel at this proceeding. Respondent had his client erroneously, and to his
23 great detriment, admit to being in the United States illegally. This resulted in
24 great harm to his client in the form of incarceration and deportation (Please see
25 attached Exhibit "B"). Respondent prematurely withdrew from representing his

1 client and did not give him reasonable warning that Respondent would withdraw
2 from representation.

3 Respondent's fee of \$10,000.00 to represent his client in a probation
4 violation case and on some misdemeanor matters was excessive in light of the
5 time spent on the case. Respondent did not engage in any in depth work or
6 research, or file any complicated motions nor use any particular expertise in this
7 case other than that required for very routine criminal matters.

8 Respondent's conduct as described in this count violated Rule 42, Ariz. R.
9 S. Ct., specifically ERs 1.1, 1.3, 1.4, 1.5, 1.16 and 8.4.

10 **Count Four (File No. 02-0400)**

11 After being retained and accepting and depositing his client's money for
12 services, Respondent failed to represent Mrs. Fischer and failed to contact the
13 opposing counsel with respect to the fact that he was now representing Mrs.
14 Fischer. In addition, Respondent never attended appointments he made with Mrs.
15 Fischer, never returned phone calls, never replied to documents that needed to be
16 replied to that were issued by opposing counsel, and basically abandoned his
17 representation of his client. On or about February 13, 2002, Mrs. Fischer asked
18 Respondent to return the \$5,000.00 fee indicating that she received no service
19 whatsoever from him other than three weeks of dishonest conduct.

20 Also on February 13, 2002, Mrs. Fischer fired Respondent and asked for a
21 refund of her money. Respondent indicated he no longer had the money and he
22 provided Mrs. Fischer with a letter that read, "he will use his best efforts to refund
23 the Fischer's \$5,000.00 retainer fee within three weeks." To this date,
24 Respondent has never returned Mrs. Fischer's money, never returned her phone
25 calls and has abandoned her case entirely.

1 Respondent was sent two letters by Staff Bar Counsel, asking each time
2 that he respond to the Bar complaint. Respondent failed to respond whatsoever to
3 these requests for cooperation and a written response.

4 As a result of the above conduct, the Probable Cause Panelist entered a
5 Probable Cause Order on or about May 17, 2002.

6 The Respondent's conduct as described above violated Rule 42, Ariz. R. S.
7 Ct., specifically ERs 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 8.1(b), 8.4 and Rule 51(h) and
8 (i).

9 **Count Five (File No. 02-0722)**

10 Respondent failed to communicate with Mrs. Altig with respect to his
11 representation and also failed to provide her with copies of documents he had
12 allegedly filed with the Department of Immigration and Naturalization Services.
13 Mrs. Altig also wished to obtain copies of all documents in her possession
14 relating to her case. Ms. Altig was unable to contact Respondent and eventually
15 learned that his phone had been disconnected. Mrs. Altig also indicated that
16 Respondent had abandoned her representation. Staff Bar Counsel sent two letters
17 on different occasions to the Respondent asking him each time to respond to the
18 Bar complaint. The Respondent never responded.

19 A Probable Cause Order was entered by the Probable Cause Panelist on
20 May 17, 2002.

21 The Respondent's conduct as aforementioned violated ERs 1.2, 1.3, 1.4,
22 1.5, 1.15, 8.1(b), 8.4 and Rules 51(h) and (i).

23 **Count Six (File No. 02-0547)**

24 Marcilina Landeros retained the Respondent for the purposes of rendering
25 legal services in order to assist her husband. On or about August 30, 2001, Mrs.

1 Landeros provided Respondent with \$10,000.00 cash for his legal services on
2 behalf of her husband. Respondent refused to do any work until another
3 \$10,000.00 was paid up front. On January 7, 2002, Mrs. Landeros also gave to
4 Respondent a 2000 Ford Focus, which constituted the additional \$10,000.00 that
5 the Respondent required with respect to his legal fee or retainer for his future
6 services. The total amount provided to Respondent was \$20,000.00 per
7 Respondent's request. Mrs. Landeros provided this money to the Respondent,
8 and Respondent made no attempts whatsoever to provide any legal services on
9 behalf of her husband.

10 Mrs. Landeros would constantly call Respondent's office, leave messages
11 and attempt to set up meetings by physically traveling to Respondent's office, all
12 to no avail. Eventually, Mrs. Landeros became aware that Respondent's office
13 had been abandoned. Respondent failed to show up for Mrs. Landeros'
14 husband's court dates and failed to provide Mrs. Landeros or her husband with
15 any information or communication whatsoever with respect to his case.
16 Respondent did contact Mrs. Landeros in the middle of February, at which time
17 he indicated to her that he was withdrawing from the case and would be returning
18 her money. Respondent agreed to meet with Mrs. Landeros the following Friday
19 for the purpose of this refund. Respondent did not appear as promised that
20 following Friday and has not refunded any money whatsoever to Mrs. Landeros
21 or her husband.

22 Respondent has abandoned Mrs. Landeros and her husband, the client, as
23 well as the handling of their matter for which he received the \$20,000.00 or the
24 equivalent thereto. The State Bar sent correspondence to the Respondent on April
25 4, 2002, requesting his immediate compliance with the investigation by

1 responding within twenty (20) days to Mrs. Landeros. The Respondent has never
2 responded.

3 Respondent's conduct as aforementioned constitutes violations of ERs 1.1,
4 1.2, 1.3, 1.4, 1.5, 1.16, 8.1(b), 8.4 and Rule 51(h) and (i).

5 **Count Seven (File No. 02-0555)**

6 Ms. Murillo retained Respondent to represent her husband and provided a
7 \$1,000.00 money order up front. Ms. Murillo expended additional other monies
8 and time in preparing for a June 11, 2001 court date on behalf of her husband.
9 Prior to that court date and since, Ms. Murillo repeatedly attempted to contact the
10 Respondent to no avail. When Ms. Murillo finally got through to Respondent's
11 secretary, she was informed that the Respondent changed the court date to some
12 time in October of 2001. Respondent's office informed Ms. Murillo that she
13 would receive by mail the new court date, as well as some original papers back.
14 No such information was ever provided and no further contact was ever made
15 with the Murillos by the Respondent or his office staff.

16 Ms. Murillo continued to make and place calls through January of 2002,
17 but no such answers were ever made by the Respondent. Finally, Ms. Murillo
18 received a letter for deportation regarding her husband. Ms. Murillo took the
19 letter over to the Respondent's office only to find that it was abandoned and that
20 he had not paid his rent. Ms. Murillo's matter on behalf of her husband has been
21 completely abandoned and none of the promised legal services were
22 accomplished. The aforementioned conduct resulted in the filing of a Bar
23 complaint by Ms. Murillo on March 21, 2002.

24 Staff Bar Counsel for the State Bar sent two letters to Respondent on
25 different dates, requesting each time that he comply with the Supreme Court

1 Rules and respond to the Bar complaint. Neither time has the Respondent
2 responded to the Bar's requests. On or about May 30, 2002, the Probable Cause
3 Panelist entered a Probable Cause Order finding that sufficient probable cause
4 exists to issue a complaint against the Respondent.

5 The aforementioned conduct as described above violates Rule 42, Ariz. R.
6 S. Ct., specifically ERs 1.1, 1.2, 1.3, 1.5, 1.16, 8.1(b), 8.4 and Rule 51(h) and (i).

7 **Count Eight (File No. 02-0593)**

8 Mr. Wood retained Respondent and paid \$3,000.00 up front to handle his
9 immigration matters in November of 2000. Mr. Wood had no contact with
10 Respondent until November 2001 when Respondent finally answered Mr.
11 Wood's phone calls regarding certain issues Mr. Wood had with respect to his
12 representation and other non-attorneys that were allegedly representing Mr. Wood
13 with respect to his naturalization papers. In November 2001, Respondent
14 informed Mr. Wood that he no longer had a secretary or any employees, but that
15 he would personally file with the court the documents necessary for the lawful
16 permanent residence status that Mr. Wood had requested and was seeking.
17 Thereafter, nothing occurred and Mr. Wood again made attempts to contact
18 Respondent via numerous phone calls.

19 Eventually, these efforts resulted in Mr. Wood finding out that the
20 Respondent's voice mail was full. Mr. Wood tried to contact the Respondent
21 many times, but always received the same answer from the answering machine.
22 Finally, Mr. Wood drove to Respondent's office only to find the door locked and
23 the practice to have been abandoned. Respondent has completely abandoned his
24 representation of Mr. Wood, failed to provide services, failed to timely prosecute
25 Mr. Wood's matter, charged excessive fees, failed to return monies, failed to

1 communicate, has caused considerable delay and violated various other ethical
2 rules as a result of his conduct.

3 On or about March 27, 2002, Mr. Wood filed a Bar complaint with the
4 State Bar. Shortly thereafter on April 10, 2002, Bar Counsel sent a letter to
5 Respondent requesting his immediate response to the allegations of the Bar
6 complaint. Respondent once again failed to respond. The Probable Cause
7 Panelist entered an Order of Probable Cause on or about May 17, 2002, finding
8 probable cause exists to issue a complaint against the Respondent.

9 The aforementioned conduct violates Rule 42, Ariz. R. S. Ct., specifically
10 ERs 1.2, 1.3, 1.4, 1.15, 1.16, 8.1(b), 8.4 and Rule 51(h) and (i).

11 **Count Nine**

12 As the result of the recent and continued abandonment of numerous clients
13 and client files by the Respondent, the State Bar recently petitioned the Maricopa
14 County Superior Court for an Order Appointing Conservator over the abandoned
15 files of the Respondent. The Respondent was personally served with a copy of
16 this Petition and an Order to Show Cause, signed by the presiding judge. The
17 Show Cause Order mandated his appearance to show cause why the
18 conservatorship should not be appointed. The Superior Court's Order specifically
19 requested Respondent's appearance at a Show Cause hearing regarding why the
20 conservatorship should not go forward. The Respondent failed to comply with
21 that Court Order by failing to appear at the hearing (See attached Order marked as
22 Exhibit "C").

23 Respondent's conduct as described in this count violates Rule 42, Ariz. R.
24 S. Ct., specifically ERs 3.4(c), 8.4(b), (c) and (d), and Rule 51(e) and (k).

25 **PROPORTIONALITY ANALYSIS AND PROPOSED SANCTION**

1 Arriving at the appropriate sanction, the Disciplinary Commission and the
2 Arizona Supreme Court generally rely on both the case law and the ABA
3 Standards for Imposing Lawyer Sanctions. The ABA Standards for Imposing
4 Lawyer Sanctions provide guidance with respect to an appropriate sanction in this
5 matter. The Supreme Court and the Disciplinary Commission are consistent in
6 utilizing the Standards to determine appropriate sanctions for attorney discipline.
7 In re Kaplan, 179 Ariz. 175, 877 P2d. 274 (1994). These standards provide that
8 four factors should be considered in determining the sanction: The duty violated,
9 the lawyer's mental state, the actual potential injury, and aggravating and
10 mitigating factors.
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14 There are several standards applicable to the rule violations in this matter.

15 Standard 4.11, applicable in cases involving the failure to preserve client
16 property states: "Disbarment is generally appropriate when a lawyer knowingly
17 converts client property and causes injury or potential injury to a client."
18

19 Standard 4.41 pertaining to cases involving a failure to act with reasonable
20 diligence and promptness in representing a client, states:

21 Disbarment is generally appropriate when: (a) a lawyer abandons a
22 practice and causes serious or potentially serious injury to a client; or
23 (b) a lawyer knowingly fails to perform services for a client and causes
24 serious or potentially serious injury to a client; or (c) a lawyer engages
25 in a pattern of neglect with respect to client matters and causes serious
or potentially serious injury to a client.

1 Standard 4.61 pertaining to cases where the lawyer engages in fraud, deceit
2 or misrepresentation directed towards a client, states: "Disbarment is generally
3 appropriate when a lawyer knowingly deceives a client with the intent to benefit
4 the lawyer or another, and causes serious injury or potential serious injury to a
5 client."
6

7 Standard 5.11 pertains to a lawyer's personal integrity, states that
8 disbarment is generally appropriate when:
9

10 (a) a lawyer engages in serious criminal conduct, a necessary element
11 of which includes intentional interference with the administration of
12 justice, false swearing, misrepresentation, fraud, extortion,
13 misappropriation or theft; . . .; or (b) a lawyer engages in any other
14 intentional conduct involving dishonesty, fraud, deceit or
misrepresentation that seriously adversely reflects the lawyer's fitness
to practice.

15 Standard 6.21 is appropriate when pertaining to an attorney's abuse of the
16 legal process, it states:

17 Disbarment is generally appropriate when a lawyer knowingly violates
18 a court order or rule with the intent to obtain a benefit for the lawyer or
19 another, and causes serious injury or potential serious injury to a party
20 or causes serious or potentially serious interference with the legal
proceeding.

21 Standard 7.1, dealing with duties owed to the profession, states that:

22 Disbarment is generally appropriate when a lawyer knowingly engages
23 in conduct that is a violation of a duty owed to the profession with the
24 intent to obtain a benefit for the lawyer or another, and causes serious
25 or potentially serious injury to a client, the public or the legal system.

1 There are also many lesser ABA Standards that would be appropriate for
2 many of the other ethical rule violations of lesser severity. They range anywhere
3 from suspension to admonition. They are being omitted herein because the
4 presumptive sanction in this matter is the most important issue for this Hearing
5 Officer to consider when determining the appropriate sanction. In this case, the
6 presumptive sanction is clearly disbarment.
7

8 Using disbarment as the presumptive sanction in this matter, the next step
9 in the analysis under the Standards is consideration of aggravating and mitigating
10 circumstances. Pursuant to Standard 9.22, the applicable aggravating factors in
11 this matter are:
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- 14 (b) Dishonest or selfish motive;
 - 15 (c) A pattern of misconduct;
 - 16 (d) Multiple offenses;
 - 17 (e) Bad faith obstruction of the disciplinary proceeding by intentionally
18 failing to comply with rules or orders of the disciplinary agency;
 - 19 (f) Submission of false evidence and false statements or other deceptive
20 practices during the disciplinary process;
 - 21 (g) Refusal to acknowledge lawful nature of conduct;
 - 22 (h) Vulnerability of victims;
 - 23 (i) Substantial experience in the practice of law;
 - 24 (j) Indifference to making restitution;
 - 25 (k) Illegal conduct.

26 Pursuant to Standard 9.32 the only applicable mitigating factor in this
27 matter is:

- 28 (a) The absence of a prior disciplinary record prior to 1999. (The
29 mitigating factor stated by the State Bar is the only factor apparent from the

1 record in this case as the Respondent has not participated in the formal
2 proceedings, and therefore has not made any claims that any other mitigating
3 factors apply.)
4

5 Based upon the foregoing, disbarment is appropriate in this case.

6 CASE LAW

7 The decisions of the Supreme Court of Arizona and the recommendations
8 of the Disciplinary Commission and factually and procedurally similar discipline
9 cases support the proposition that disbarment is an appropriate and proportional
10 sanction.
11

12 It is difficult to understand why a lawyer stops participating in a discipline
13 proceeding, particularly when the charges are serious and the potential result is
14 loss of the lawyer's privilege to practice law. Seemingly inexplicable conduct of
15 that nature generally derives from significant personal, psychological, or health
16 problems a lawyer is having. However, when a lawyer fails to participate in
17 proceedings and fails to present any evidence or explanation in his or her own
18 defense, there is little that the Bar, the Hearing Officer, the Disciplinary
19 Commission, or the Supreme Court can do except to move forward to further the
20 purposes of discipline in protecting the public, the profession, and the justice
21 system from that lawyer.
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1 As the Disciplinary Commission has observed, "the ultimate sanction
2 imposed should at least be consistent with the sanction for the most serious
3 instance of misconduct among the number of violations; it might well be and
4 generally should be greater than the sanction for the most serious misconduct"
5 (Matter of Redeker, 177 Ariz. 305, 868 P.2d 318 (1994), citing 1991 ABA
6 Standards, Theoretical Framework, p. 6;).

7
8 Discipline cases involving multiple and serious ethical misconduct
9 combined with failures to cooperate with or participate in formal disciplinary
10 proceedings frequently result in disbarment. (See: Matter of Harlan E. Carey, Jr.,
11 SB-00-0055-D, August 25, 2000 (disbarment for Respondent's failure to
12 represent clients in three separate matters, failure to diligently represent, failure to
13 communicate and abandoning clients, three aggravating factors); Matter of James
14 R. Hustad, SB-00-0044-D, September 29, 2000 (disbarment and restitution;
15 failing to adequately communicate, failing to safeguard funds, withdrawing,
16 abandoning the practice, three aggravating factors); In the Matter of Sheldon A.
17 Silver, SB-00-0109-D, filed February 16, 2001 (disbarred for conduct in failing to
18 communicate, diligently pursue, failing to attend hearings, abandoning client's
19 case, six aggravating factors); Matter of Kobashi, 181 Ariz. 253, 889 P.2d 611
20 (1995)) (disbarment and restitution after lawyer failed to deliver \$15,000.00 in
21 funds as directed by the client, failed to communicate with the client or respond to
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1 request for information, failed to respond to the Bar and failed to participate in
2 disciplinary proceedings); (Matter of Brady, 186 Ariz. 370, 923 P.2d 836 (1996))
3 (respondent disbarred in matter involving abandonment of practice and failure to
4 participate in disciplinary proceedings; Matter of Engan, 170 Ariz. 409, 825 P.2d
5 468 (1992) (respondent disbarred for multiple ethical violations and failure to file
6 a timely answer in the formal proceeding); Matter of Grant, 169 Ariz. 498, 821
7 P.2d 159 (1991) (disbarment and order of restitution in connection with multiple
8 violations including failure to refund unused portions of retainers, failure to safe-
9 keep client's property, failure to respond to State Bar, and failure to file a timely
10 response to the complaint in the formal proceedings); Matter of Gaynes, 168 Ariz.
11 574, 816 P.2d 231 (1991) (disbarment on three count complaint alleging the lack
12 of diligence, failure to communicate, conflict of interest, failure to remit funds
13 owing to a client, and failure to respond to or cooperate with the Bar, combined
14 with failure to file a timely answer or respond to the Bar's Motion to Strike the
15 Answer) (see also Matter of Henry, 168 Ariz. 141, 811 P.2d 1078 (1991)).

16 RESTITUTION

17 The State Bar requested the imposition of restitution in this matter since
18 many of the clients have requested restitution and since the State Bar presented
19 evidence that would support such an order.
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1 **Count One (File No. 99-1826)**

2 The client in this case was Luis A. Vega. The admitted facts in this case
3 indicate that Mr. Vega paid three thousand (\$3,000.00) dollars to Respondent.
4 The admitted facts also illustrate that Respondent did not communicate, nor
5 attend hearings on behalf of Mr. Vega and as such, informed Judge Reinstein on
6 February 8, 1999 that he would refund the three thousand (\$3,000.00) dollar
7 retainer to Mr. Vega. On March 23, 1999, Judge Reinstein ordered a refund of
8 the three thousand (\$3,000.00) dollar retainer to Mr. Vega. To date, it is deemed
9 admitted that the Respondent did not return the retainer to Mr. Vega. Therefore,
10 restitution in the amount of three thousand (\$3,000.00) dollars to Mr. Vega is
11 appropriate based upon the admitted facts.
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15 **Count Two (File No. 99-2215)**

16 Einar Sundstrom was a client who paid ten thousand (\$10,000.00) dollars
17 to Respondent in March of 1999 for the purpose of filing an appellate brief in
18 Illinois. Respondent incurred a very lengthy delay in the filing of the brief.
19 Respondent has also admitted to a lack of competence, diligence and a failure to
20 expedite in the filing of the brief. The Complainant, Einar Sundstrom, has
21 provided a Declaration for the Hearing Officer to consider (Please see attached
22 Exhibit "D"). The Complainant states that the brief was ineffective, of poor
23 quality, a complete waste of time, and of little substance. It could have been
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1 accomplished for one thousand (\$1,000.00) dollars or less. Mr. Sundstrom's
2 Declaration seeks restitution in the amount of ten thousand (\$10,000.00) dollars.
3 Based upon the Declaration, Respondent should be ordered to pay restitution in
4 the amount of ten thousand (\$10,000.00) dollars to Einar Sundstrom.
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6 **Count Three (File No. 99-0906)**

7 Mr. Juarez was charged a flat fee of ten thousand (\$10,000.00) dollars to
8 represent him in two matters. It is admitted that the Respondent was paid five
9 thousand eight hundred twenty-five (\$5,825.00) dollars of this ten thousand
10 (\$10,000.00) dollar retainer. The Respondent has also admitted, however, that
11 the fee was excessive. In this case, the Hearing Officer is asked to refund to the
12 Complainant a total amount between the range of seven thousand five hundred
13 (\$7,500.00) dollars and five thousand eight hundred twenty-five (\$5,825.00)
14 dollars as restitution¹. The facts and the record indicate that the Respondent
15 negotiated a plea for probation revocation charges by having his client plead
16 guilty to being in the United States illegally. Subsequently, and as a result of
17 convincing his client to make that plea, the client was actually sentenced to five
18 years in prison.
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25 ¹ The Bar received receipts totaling \$5,825.00 in cash payments to Respondent. The Complainants, however, provide a Declaration showing they actually paid closer to \$7,500.00 and request the full \$7,500.00.

1 After Respondent was confronted by Benito Juarez and his father about
2 having him admit to being an illegal alien, Respondent filed a motion to withdraw
3 from the case stating that the client failed to abide by the contractual agreement in
4 reference to attorney's fees. In March of 1999, in post conviction relief
5 proceedings, the Superior Court found Juarez's admission to illegal alien status
6 had been erroneous and that the fees were excessive for these misdemeanor
7 matters especially given the harm to Benito Juarez for having to serve time in jail.
8 The harm imposed was very serious. The Respondent provided incompetent and
9 inappropriate advice, basically resulting in the sentencing of his client to a period
10 of time in jail and then deportation. This misconduct may warrant a full refund of
11 the seven thousand five hundred (\$7,500.00) dollars to Mr. Manuel Juarez. Thus,
12 restitution in the amount of seven thousand five hundred (\$7,500.00) dollars is
13 requested for Manual Juarez.

14 **Count Four (File No. 02-0400)**

15 The client in this case was Marianne Fischer. Based upon the admitted
16 facts of the complaint, the Respondent accepted five thousand (\$5,000.00) dollars
17 via a cashier's check to represent Ms. Fischer in a custody action. Respondent,
18 however, provided no services, did not refund the money to the client and
19 abandoned her and her case entirely. As such, his intentional fraud and
20 misrepresentation in obtaining cash and a retainer fully knowing he was going to

1 abandon her for his own personal gain would require restitution in the amount of
2 five thousand (\$5,000.00) dollars to Complainant, Mrs. Fischer.

3
4 **Count Five (File No. 02-0722)**

5 Ms. Barbara Altig retained the Respondent to handle an immigration matter
6 on her behalf. Ms. Altig, when she filed the complaint, was asking for copies of
7 documents that the Respondent filed with INS, as well as other documents he had
8 in his possession relating to her case. When confronted by Ms. Altig, he claimed
9 that his phone was disconnected. The evidence is such that he abandoned Ms.
10 Altig. Ms. Altig has made no claim for a refund in her complaint. Bar counsel
11 believes that the evidence suggests, and the admission of the facts suggests that
12 the Respondent did no work for Ms. Altig, thereby entitling Ms. Altig to a refund
13 of any amount she may have paid. Bar counsel has attempted to contact Ms.
14 Altig several times at (480) 991-8638 and has only been able to reach the voice
15 mail of John Altig indicating the "mailbox is full." The Bar's attempts have been
16 ongoing in the days prior to the hearing.

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20 **Count Six (File No. 02-0547)**

21 The client in this case was Marcilina Landeros. She retained the
22 Respondent for legal services to be performed on behalf of her husband. The
23 admitted facts indicate that Mrs. Landeros provided the Respondent with twenty
24 thousand (\$20,000.00) dollars up front as legal fees for future services. The
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1 money was provided in the form of ten thousand (\$10,000.00) dollars cash and a
2 2000 Ford Focus, which was to constitute an additional ten thousand (\$10,000.00)
3 dollars. The admitted facts indicate the Respondent did no work for Mrs.
4 Landeros or her husband and absconded with the twenty thousand (\$20,000.00)
5 dollars, abandoning his client. As such the client, Mrs. Landeros, is entitled to an
6 order of restitution in the amount of twenty thousand (\$20,000.00) dollars.
7

8 **Count Seven (File No. 02-0555)**
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10 The client in this case was Maria Murillo. She retained Respondent to
11 represent her husband in an immigration deportation matter. She provided the
12 Respondent with one thousand (\$1,000.00) dollars on June 4, 2001. Again the
13 Respondent performed no services, abandoned the client and as such she is
14 entitled to an order of restitution in the amount of one thousand (\$1,000.00)
15 dollars.
16

17 **Count Eight (File No. 02-0593)**
18

19 The client in this case was Victor Wood who retained Respondent for legal
20 services pertaining to his immigration matters. He signed a fee agreement and
21 provided the Respondent with three thousand (\$3,000.00) dollars for legal
22 services. The Respondent abandoned Mr. Wood, provided no such services and
23 as a result of these admitted facts, the client, Victor Wood, requests and the Bar
24
25

1 recommends an order of restitution in the amount of three thousand (\$3,000.00)
2 dollars.

3 DATED this 20th day of September 2002.

4
5
6 Frederick C. Berry, Jr. /hps
7 Frederick C. Berry, Jr.
8 Hearing Officer 9S

9 Original filed with the Disciplinary Clerk
10 this 20th day of September 2002.

11 Copy of the foregoing mailed
12 this 20th day of September 2002, to:

13 Maximiliano S. Garcia
14 Respondent
15 4410 West Union Hills, #7-216
16 Glendale, AZ 85308-1702

17 John A. Furlong
18 Bar Counsel
19 State Bar of Arizona
20 111 W. Monroe, Suite 1800
21 Phoenix, AZ 85003-1742

22 by: Raunie Smith
23
24
25